

EXECUTION COPY

DEVELOPMENT COVENANT

This Development Covenant ("Covenant") is made this 6th day of June, 2007 by and between 56 CLYDE STREET ACQUISITION, LLC and 61 CLYDE STREET ACQUISITION, LLC, Massachusetts limited liability companies, both with a usual address of 20 Park Plaza, Suite 468, Boston, MA 02116 (collectively, the "Developer"), and the CITY OF SOMERVILLE, a Massachusetts municipal corporation with usual address of 93 Highland Avenue, Somerville, MA 02143 ("City").

BACKGROUND

WHEREAS, the Developer owns the land and building known as 55-61 Clyde Street and 56 Clyde Street, Somerville, MA; and

WHEREAS, the above-mentioned properties are shown on City of Somerville Assessor's Map #33 (included herein as Attachment A of Exhibit A), as Lots #A-24, #A-25, #A-26, #A-27, and #A-28, (collectively such parcels, minus 2,500 square feet at the corner of Warwick and Clyde Streets, are referred to herein as the "Property" or the "MaxPak Site"); and

WHEREAS, the Developer wishes to construct a 199-unit residential development (the "Project") at the Property; and

WHEREAS, the Property's current zoning does not allow for construction of the Project; and

WHEREAS, the Developer wishes the City to rezone the Property to a PUD B-1 District as set forth in a proposed amendment to the Somerville Zoning Ordinance included herein as Exhibit A (the "Rezoning"); and

WHEREAS, as part of the community planning process, the Mayor appointed an Design and Development Review Committee (the "Committee") consisting of 11 members representing a broad cross-section of neighborhoods surrounding the MaxPak Site; and

WHEREAS, in addition to a 12-member team of professional staff from the Mayor's Office of Strategic Planning and Community Development ("SPCD Staff"), a team of outside professional consultants ("Outside Consultants"), including architects, lawyers, planners, transportation engineers, and economic development consultants, was retained to assist with the community planning process; and

WHEREAS, the formal community planning process for the MaxPak site consisted of 6 neighborhood workshops and 9 meetings of the Committee conducted over many months; and

WHEREAS, a report dated June 27, 2005, entitled "MaxPak Community Planning Process Final Report" summarized the concerns and recommendations arising out of the community planning process ("the Final Report"); and

WHEREAS, the Developer has made certain representations regarding the Project in order to alleviate neighborhood concerns if the Rezoning were to be adopted; and

WHEREAS, the City wishes to memorialize the Developer's representations in the form of this Covenant which tracks the sequence of recommendations in the Final Report; and

WHEREAS, there will be additional public process when the Developer files an application for a Special Permit with Site Plan Review, as required under the City of Somerville's Zoning Ordinance, and the Somerville Planning Board holds a public hearing on the Project;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer, for itself, its successors and assigns and affiliated entities, and the City hereby covenant and agree as follows:

A. EXISTING CONDITIONS.

(1) The Developer shall demolish the existing buildings at the Property, in compliance with the mitigation stipulated in a Memorandum of Agreement dated January 17, 2007, between the Developer and the Somerville Historic Preservation Commission, a copy of which is attached as Exhibit B.

(2) The Developer shall file a remediation plan that is consistent with Massachusetts General Laws, c. 21E, and regulations promulgated thereunder at 310 CMR 40 *et seq.* (the "Massachusetts Contingency Plan" or "MCP"). The remediation process will be performed under the direction of a licensed site professional, as required by the MCP, and all required filings will be made with the Massachusetts Department of Environmental Protection (MADEP) prior to any demolition or development of the MaxPak Site.

B. NEIGHBORHOOD CONTEXT.

(1) Uses:

The Project shall consist of no more than 199 residential units. No more than 65 units (with no more than 110 bedrooms) shall be located at the Warwick Street

edge of the Property. No more than 134 units shall be located in the middle of the Property and at the Lowell Street side of the Property.

(2) Site Planning:

(a) The City shall recommend to the Planning Board that the site plan minimize the impact of motor vehicles and enhance the pedestrian environment; and that the Project be well-integrated and compatible with the existing neighborhood context in terms of scale, use of materials, and proportions.

(b) The Developer shall provide two distinct and unconnected vehicular access and egress points in order to prevent cut-through automobile traffic and balance the traffic created by the Project. A ramped roadway (the "Ramp") extending down into the Property from Lowell Street shall be the only means of access and egress for the 134 units at the Lowell Street side of the Property. The 65 units on Warwick Street shall have access and egress as approved by the City of Somerville Planning Board and Department of Traffic and Parking. The condominium documents shall prohibit automobile cut-through traffic between the access and egress points at Warwick Street and the Ramp to Lowell Street (except for emergency vehicles), and the site plan shall incorporate physical impediments to automobile cut-through traffic that are acceptable to the City of Somerville Fire Department.

(c) The Developer shall address streetscape, including sidewalks and landscaping in the application for Special Permit with Site Plan Review.

(d) In order to enhance the Community Path as a viable transportation option for pedestrian, bicyclists, and commuters accessing the Red Line station in Davis Square or a future green line station in the vicinity of Lowell Street or Cedar Street, there shall be 3 pedestrian/ bicycle access connections to the Community Path: (i) public access at Warwick Street to the Community Path; (ii) private and/or public access in the middle of the Property to the Community Path; and (iii) public access at Lowell Street to the Community Path, which will be provided by a sidewalk adjacent to the Ramp to Lowell Street and will be detailed as part of the final design submitted to the Planning Board and be subject to public comment at that time. All 3 access connections shall be ADA compliant.

C. BUILDING DESIGN.

(1) Planning Board Issues:

The City shall recommend to the Planning Board and the SZO Design Review Committee during the permitting process that the buildings be designed to a high

standard; that the overall design of the Project take into account the context, scale and residential character of the surrounding neighborhoods, and that there be appropriate fenestration, façade articulation, and unit configuration on all sides of buildings facing existing neighborhoods so that no neighborhood overlooks a defined rear of the development, such as a blank wall.

(2) Height:

Buildings across the site are anticipated to be four story structures over basement (as defined in the Massachusetts Building Code at 780 CMR 5.02) level parking. It is anticipated that the buildings facing Warwick Street will be three stories at the Warwick Street edge of the property, stepping up to four stories toward the interior of the site. No portion of any building along Warwick Street within thirty feet of abutting properties shall exceed three stories above basement level parking or forty feet in height. No buildings along Lowell Street shall exceed four stories or fifty-six feet in height above the Lowell Street grade. Building heights will be reviewed by the Planning Board as part of the master plan and special permit with site plan review process. A “story” shall be as defined in §2.2.153 of the Somerville Zoning Ordinance, and a “first story” shall be as defined at §2.2.154, namely “the lowest story, of which sixty (60) percent of the distance from the floor to the floor next above is above the abutting grade.”

(3) Acoustics:

As part of the Special Permit with Site Plan Review process, the Developer shall submit to the Planning Board a letter report by an acoustical consultant (see proposal attached as Exhibit C) discussing the effects of existing and proposed noise conditions on neighborhood people who reside on the other side of the rail corridor. The Planning Board may impose appropriate mitigation if there is a worsening of noise levels for such residents.

(4) Management

The Project shall be professionally managed and maintained, including those open space areas within the Project that are accessible to the public.

(5) Energy Efficiency:

The Developer shall submit a LEED checklist to the Planning Board as part of the Special Permit with Site Plan Review process.

D. TRAFFIC AND PARKING

(1) As outlined in Section B(2)(b) of this Covenant, there shall be no through-site motor vehicular connection that could be used by “cut-through” vehicular traffic, except that there shall be provision for emergency vehicles to access the entire site from either Warwick or Lowell Streets.

(2) The Developer shall donate \$220,000 to the City to implement the traffic mitigation/improvement plan (“Traffic Mitigation Plan”) included herein as Exhibit C. The Traffic Mitigation Plan was developed by the City’s Traffic and Parking Department after numerous public meetings and review of three traffic impact studies prepared by the Developer’s traffic engineers, including the Lowell Street Bridge post-completion traffic study. The 3 traffic studies were based on the Mass. Highway Department’s forecasts of future traffic projections on Lowell Street and growth projections based on historic area trends. The money shall be donated as follows: the money for the improvements on the Clyde and Warwick side shall be donated at the issuance of a building permit for Phase 1 of the Project and the remaining money shall be donated at the issuance of a building permit for Phase 2-B. [For a description of the construction phasing, see paragraph “F” below.] At 100% occupancy of Phase 1, the Developer shall conduct traffic and speed counts on Cedar Street to determine whether actual traffic volumes and speeds are consistent with the anticipated impacts of Phase 1. If Phase 1 results in any material change in site traffic generation and associated impact to level of service at intersections on Cedar Street beyond the estimates of the Developer’s original traffic study, then the Developer and the City shall work together in good faith to quantify the extent of additional impact and to identify and implement potential measures to address the additional impacts, if necessary for safety or capacity reasons. At 100% occupancy (defined as a date which is during the school year and is at least six months after final certificates of occupancy have been issued for the entire Project), the Developer shall conduct traffic and speed counts on Lowell Street to determine whether actual traffic volumes and speeds are consistent with the anticipated impacts. If occupancy of the entire Project results in any material change in site traffic generation and associated impact to level of service at intersections on Lowell Street beyond the estimates of the Developer’s original traffic study, then the Developer and the City shall work together in good faith to quantify the extent of additional impact and to identify and implement potential measures to address the additional impacts, if deemed necessary for safety or capacity reasons.

(3) The Developer shall encourage residents of the Project to use alternative transportation measures, such as ZipCars, and shall provide space for bicycle storage as part of the Project.

(4) All parking shall be located on the Property and at least 51% of the parking shall be covered. On-site visitor parking shall be provided as required by

the Planning Board in connection with the Developer's application for Special Permit with Site Plan Review.

E. OPEN SPACE AND COMMUNITY PATH

The Developer shall provide usable open space in conformity with the City's PUDB zoning requirements and landscape improvements on the Property adjacent to the Community Path [see Section F(2) below]. In addition, the Developer has agreed to expand the public access hours beyond the minimum requirements of §16.6.1 of the Somerville Zoning Ordinance. The usable open space shall be accessible to the public from 7:00 a.m. to 6:30 p.m., except that during Daylight Savings, the usable open space shall be accessible to the public from dawn to dusk.

F. PROJECT MITIGATION, AMENITIES, AND PHASING.

(1) Project Mitigation:

The Developer shall submit the Traffic Mitigation Plan described in Exhibit C and in Section D(2) above to the Planning Board with the Developer's application for a Special Permit with Site Plan Review for Phase 1 of the Project. In addition, the City shall ensure that appropriate city departments impose their usual construction mitigation measures with the goal of minimizing inconvenience to the surrounding neighborhoods, including noise, dust, and rodent control. The Developer shall procure competitive quotes from rodent control companies which are knowledgeable about local conditions and shall implement all reasonable measures for rodent control recommended by the Department of Inspectional Services.

(2) Project Amenities:

Upon the issuance of a Special Permit with Site Plan Review for Phase 1, the Developer shall donate the sum of \$50,000 to the City, to be used by the City as follows: \$20,000 for Ward 5 benefits and/or amenities; and \$30,000 for additional undesignated community benefits and/or amenities to be determined by the Mayor; provided the benefit or amenity is suitable for funds originating from a charitable trust (see list of acceptable charitable purposes attached as Exhibit D) In addition, the Developer shall provide the following amenities, most of which have already been mentioned elsewhere in the Covenant:

- landscape improvements on the Property next to the Community Path for the benefit of users of the Community Path;
- a landscape screening buffer adjacent to buildings along the active rail line for the benefit of properties on the other side of the railroad tracks;

- a public sidewalk complying with all applicable codes along the Warwick Street side of the Property;
- publicly accessible open space within the Project, provided that the Developer reserves the right on behalf of future inhabitants of the Project to take reasonable measures to ensure public health and safety, including the regulation (but not the prohibition) of bicycles and dogs;
- assistance with bike path development The Developer will remove the rails and ties as part of creating construction access on the MBTA right of way if the Developer uses the railroad right of way for construction access and egress. The Developer shall leave the railroad right of way in the same or better condition as it is in as of the date of this Covenant; and
- a raised crossing at the corner of Cedar Street and the Community Path for the benefit of bicyclists and pedestrians;

(3) Project Phasing:

(a) Phase 1:

Phase 1 of the Project shall consist of the construction of up to 65 residential units (with no more than 110 bedrooms) at the Warwick Street edge of the Property. Phase 1 is estimated to take 18-24 months. The Developer shall use the undeveloped portion of the Community Path between Lowell and Cedar Streets for access and egress of construction vehicles during Phase 1, provided Transit Realty Associates grants the Developer a license to do so, it being understood that this undeveloped portion of the Community Path is under the jurisdiction of the MBTA and not the City. If Phase 1 is not completed prior to the City's commencement of construction of the permanent Community Path between Lowell and Cedar Streets (anticipated to commence in the Spring of 2009), the Developer shall be allowed to use other reasonable means of construction access and shall follow the instructions of the MBTA and the City as to construction access and egress.

(a) Phase 2-A:

Phase 2-A shall consist of construction of the Ramp and foundations and sitework for remaining buildings. Unless otherwise directed by the City, during Phase 2-A all construction vehicles shall enter the site via Warwick Street using the Developer's land adjacent to the Community Path and shall exit the site by making a right-hand turn onto Warwick Street and a left-hand turn onto Clyde Street. Access for construction vehicles shall be restricted to the Ramp as soon as the Ramp has been constructed to a safe, passable level. Phase 2-A is anticipated to take between 6 to 8 months.

To facilitate Phase 2-A, the Developer has secured and shall keep current a permit for the Ramp from the Massachusetts Highway Department

(“MHD”). The Developer shall continue to comply with the state roadway permit process (which has included numerous meetings with MHD engineering staff over the past two years) to ensure that the Ramp meets all state standards for site lines and public safety and shall cooperate in supplying relevant information as required by the city

(c) Phase 2-B:

Phase 2-B shall consist of the construction of approximately 65 residential units and associated parking. Construction of Phase 2-B buildings (other than work completed as Phase 2-A) shall not begin until the Ramp has been constructed to a safe, passable level, at which point vehicular traffic related to Phase 2-B shall be restricted to the Ramp. Phase 2-B is estimated to take 12-16 months

(d) Additional Phases:

Any additional phases shall consist of the construction of the remaining residential units, and access/egress for construction vehicles shall be solely via the Ramp. The total number of units constructed in all phases shall not exceed 199 units.

(e) Construction Schedule:

The construction schedule will be determined in a standard large project construction agreement between the City and the Developer during the special permit with site plan review process.

G. MISCELLANEOUS

(1) Payment in Lieu of Taxes (PILOT):

The Developer shall not sell the Project or any part of the Project to a nonprofit entity exempt from real estate taxes without the prior written permission of the City, which may, in the sole discretion of the City, be conditioned upon the non-profit entity’s entering into a satisfactory Payment in Lieu of Taxes (PILOT) Agreement with the City.

(2) Conditions Rendering Covenant Null and Void:

This Covenant shall be null and void if the City of Somerville Board of Aldermen fails to adopt the Rezoning, or the Rezoning is appealed and is not upheld on appeal. Furthermore, the Developer’s obligation to provide mitigation and project amenities shall cease (i) the Planning Board fails to approve a PUD Preliminary Master Plan and Special Permit with Site Plan Review for Phase 1 consistent with

the Developer's representations in this Covenant regarding the overall Master Plan and Phase 1, and the Developer appeals and does not prevail on appeal; or (ii) an appeal is filed from the Planning Board's approval of such PUD Preliminary Master Plan and Special Permit with Site Plan Review for Phase 1, and the Developer and the Planning Board do not prevail on appeal or settle the case to their mutual satisfaction. . Notwithstanding the foregoing, the restrictions on height and overall number of units shall remain in effect and be binding on the Developer and successors and assigns.

(3) Notice.

Any notice given hereunder shall be in writing and shall be deemed duly given if mailed by certified or registered mail, postage and registration charges prepaid; by overnight delivery service with receipt; or by hand delivery to the Parties at the addresses set forth below:

if to the City: Mayor Joseph A. Curtatone
Somerville City Hall
93 Highland Avenue
Somerville, MA 02143

John G. Gannon, Esq.,
City Solicitor, Law Department
Somerville City Hall
93 Highland Avenue
Somerville, MA 02143

Anne M. Thomas, Esq.
Special Counsel, Law Department
Somerville City Hall
93 Highland Avenue
Somerville, MA 02143

if to the Developer: Mr. Stephen Smith
3 Concord Avenue, #32
Cambridge, MA 02138

Mr. Darin Samaraweera
KSS Realty Partners
20 Park Plaza Suite 471
Boston MA 02116

Mr. Edward B. Tobin
KSS Realty Partners
20 Park Plaza Suite 467
Boston MA 02116

Henry Rosen, Esq.
Choate Hall & Stewart
Two International Place
Boston, MA 02110

Richard G. DiGirolamo, Esq.
424 Broadway
Somerville, MA 02145

(4) Estoppel Certificates:

Upon the Developer's request, the City shall furnish a statement in recordable form as to the status of any matter pertaining to this Covenant, including, without limitation, acknowledgements that (or to the extent which) the Developer is in compliance with its obligations hereunder.

(5) This Covenant shall run with the land and shall be binding on the Developer and the City and their respective successors and assigns.

(6) LEED Certification:

The City encourages the Developer to obtain LEED certification for the project.

(7) Union Labor:

The City encourages the Developer to use union labor for the Project and to enter into a Project Labor Agreement.

SIGNATURE PAGE FOLLOWS

EXECUTED UNDER SEAL on the day and year first written above.

DEVELOPER:

56 Clyde Street Acquisition, LLC
61 Clyde Street Acquisition, LLC

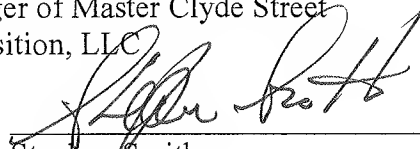
By:

Master Clyde Street Acquisition, LLC,
Manager of 56 Clyde Street Acquisition, LLC
Manager of 61 Clyde Street Acquisition, LLC


By:

K.S.S. Investment, LLC,
Manager of Master Clyde Street
Acquisition, LLC

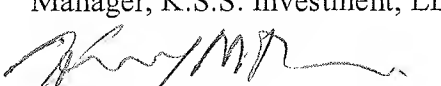
By:


Stephen Smith
Manager, K.S.S. Investment, LLC

and

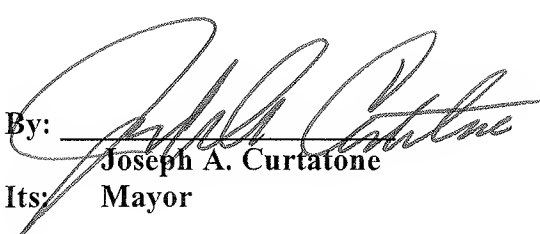

Darin S. Samaraweera
Manager, K.S.S. Investment, LLC

and


Henry M. Rosen
Manager, K.S.S. Investment, LLC

CITY OF SOMERVILLE

By:


Joseph A. Curtatone
Its: Mayor

Approved as to Form:

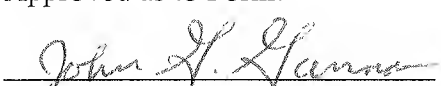

John G. Gannon, City Solicitor

EXHIBIT A
Rezoning Proposal

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF SOMERVILLE WITH RESPECT TO ARTICLE 6 “ESTABLISHMENT OF ZONING DISTRICTS,” ARTICLE 7 “PERMITTED USES,” AND ARTICLE 16 “PLANNED UNIT DEVELOPMENT.”

Be it ordained by the Board of Aldermen, in session assembled, as follows:

WHEREAS, there exist sites in the City that are either vacant, in a derelict condition, or are being used by nonconforming uses or by existing uses that are constraining the development potential of a site; and

WHEREAS, there are locations in the City where major upgrades to the existing public transportation network are scheduled, or locations where public transportation is already readily accessible; and

WHEREAS, there exist sites in the City that could support medium to higher density residential developments, and other compatible uses;

THEREFORE, be it enacted as follows:

AMENDMENTS TO ARTICLE 6

Amend 6.1.20:

Currently reads:

6.1.20 Planned Unit Development Overlay District B (PUD-B)

Proposed amendment:

6.1.20 Planned Unit Development Overlay District B & Planned Unit Development Overlay District B-1 (PUD-B & PUD-B1)

Amend 6.1.20.B:

Currently reads:

B. Standards and Guidelines

A Planned Unit Development shall be allowed by Special Permit with Site Plan Review in PUD-B Overlay Districts and shall be regulated by the requirements of Section 16. PUD-B Districts shall be overlay districts on the zoning map. For any land within a PUD-B overlay district, a developer may choose to conform either to all the controls which govern the base district(s) or to all the PUD development controls and processes.

The Planning Board shall serve as the Special Permit Granting Authority in the PUD-B Overlay District.

Proposed amendment:

B. Standards and Guidelines

A Planned Unit Development shall be allowed by Special Permit with Site Plan Review in PUD-B **and PUD-B1** Overlay Districts and shall be regulated by the requirements of Section 16. PUD-B **and PUD-B1** Districts shall be overlay districts on the zoning map. For any land within a PUD-B **or PUD-B1** overlay district, a developer may choose to conform either to all the controls which govern the base district(s) or to all the PUD development controls and processes.

The Planning Board shall serve as the Special Permit Granting Authority in the PUD-B **and PUD-B1** Overlay Districts.

AMENDMENTS TO ARTICLE 7

Amend Section 7.11 “Table of Permitted Uses” by inserting a new PUD-B1 zoning district. The existing PUD-B permitted use column would be merged with the new PUD-B1 zoning district column to form one column. All existing uses permitted under the existing PUD-B column would be permitted in the PUD-B/PUD-B1 column.

AMENDMENTS TO ARTICLE 16

Amend 16.2:

Currently reads:

A PUD shall be permitted only in a Planned Unit Development B Overlay District or in the ASMD. In addition, all land included in the proposed PUD must be contiguous and/or separated only by streets, public or private ways. Except as modified by Section 6.4 of this Ordinance, PUD-A requirements apply in the ASMD. Refer to Section 6.4 for more information on the ASMD and PUD-A.

Proposed amendment:

A PUD shall be permitted only in a Planned Unit Development B Overlay District, **a Planned Unit Development B-1 Overlay District**, or in the ASMD. In addition, all land included in the proposed PUD must be contiguous and/or separated only by streets, public or private ways. Except as modified by Section 6.4 of this Ordinance, PUD-A requirements apply in the ASMD. Refer to Section 6.4 for more information on the ASMD and PUD-A.

Amend 16.5.1. and 16.5.2.:

All references in Sections §16.5.1 and §16.5.2 to “PUD-B” must have the words “and PUD-B1” inserted immediately afterwards.

Amend 16.5.3.

Currently reads:

In reference to the provisions of Article 7 of this Ordinance, when a specific use is permitted within a zoning district only within the context of a PUD, said permitted PUD use shall comply with the following stipulations:

- 1) the use(s) shall not exceed forty percent (40%) of the total PUD intensity, as measured by floor area ratio or lot area per dwelling unit, whichever is applicable;
- 2) the use(s) shall not occupy more than forty percent (40%) of the site area, defined as the total PUD lot area exclusive of the PUD minimum landscape area requirement and exclusive of any roads and parking designed within the PUD to serve permitted uses other than or in addition to the use(s) in question.

Proposed amendment:

In reference to the provisions of Article 7 of this Ordinance, when a specific use is permitted within a zoning district only within the context of a PUD, said permitted PUD use shall comply with the following stipulations:

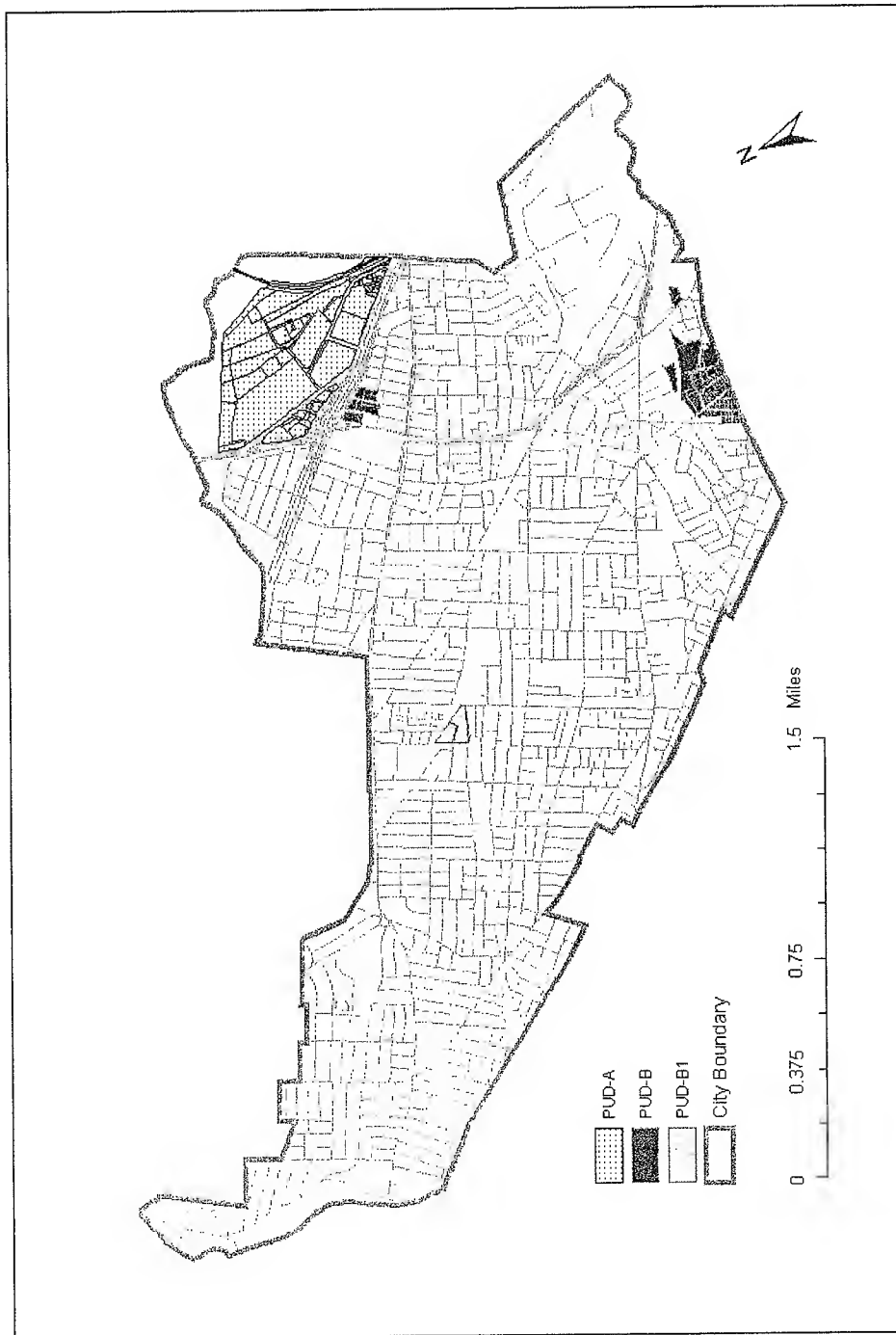
- 1) the use(s) shall not exceed forty percent (40%) of the total PUD intensity, as measured by floor area ratio or lot area per dwelling unit, whichever is applicable;
- 2) the use(s) shall not occupy more than forty percent (40%) of the site area, defined as the total PUD lot area exclusive of the PUD minimum landscape area requirement and exclusive of any roads and parking designed within the PUD to serve permitted uses other than or in addition to the use(s) in question.

In the PUD-B1 district, a PUD with a residential component that exceeds these stipulations is permitted without requiring a waiver under §16.5.4.

ARTICLE 16: PLANNED UNIT DEVELOPMENT (PUD)

ATTACHMENT A

PLANNED UNIT DEVELOPMENT (PUD) OVERLAY DISTRICT



ATTACHMENT A (CONTINUED)

PARCELS IN THE PUD-B1 OVERLAY DISTRICT (MAP/BLOCK/LOT)

33-A-24

33-A-25

33-A-26

33-A-27

33-A-28

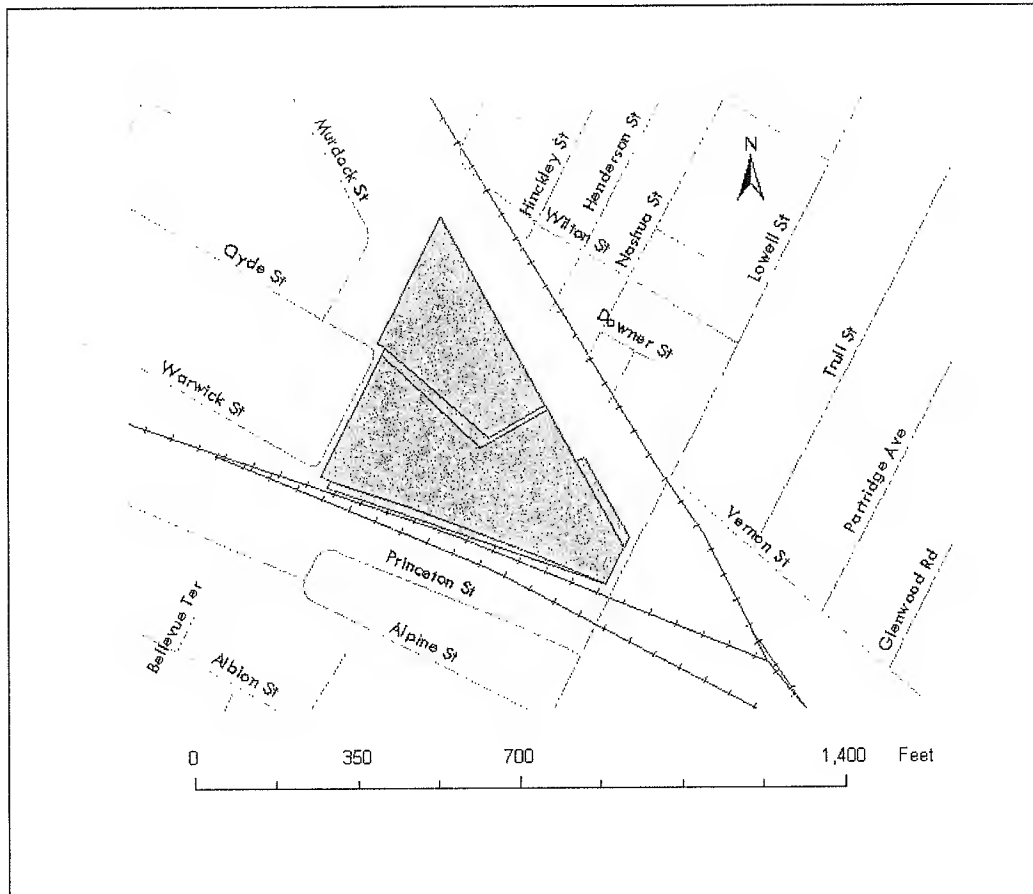


EXHIBIT B
MOA with Somerville Historic Preservation Commission



CITY OF SOMERVILLE, MASSACHUSETTS
HISTORIC PRESERVATION COMMISSION

Joseph A. Curtatone
Mayor

MEMORANDUM OF AGREEMENT
BETWEEN
SOMERVILLE HISTORIC PRESERVATION COMMISSION
AND
61 CLYDE STREET ACQUISITION, LLC

This Memorandum of Agreement ("MOA") is entered into this 17th day of January, 2007, between the Somerville Historic Preservation Commission ("SHPC") and 61 Clyde Street Acquisition, LLC (the "Developer").

WHEREAS, the Developer proposes to construct a multi-family residential condominium project in Somerville, MA, bounded by Warwick and Clyde Streets to the Southwest and by Lowell Street to the Northeast (the "Project"); and

WHEREAS a former manufacturing building located at 55-61 Clyde Street, shown on Lot A-26 on Assessor's Map #33 attached hereto as Exhibit A, (the "Building") is individually eligible for listing in the National Register of Historic Places ("National Register"); and

WHEREAS, the Developer has entered into an Memorandum of Agreement ("MOA") with the Massachusetts Historical Commission ("MHC") and the Massachusetts Highway Department ("MHD") dated May 12, 2006; and

WHEREAS, the Building is included in the Inventory of Historic and Archeological Assets of the Commonwealth; and

WHEREAS, MHC has determined that the proposed demolition of the Building constitutes demolition of all of a Historic Structure listed in the Inventory of the Historic and Archeological Assets of the Commonwealth pursuant to 301 CMR11.03 (10) (b); and

WHEREAS, no feasible or prudent alternative to demolition and construction exists which would avoid or minimize the demolition of the property; and

WHEREAS, the only mitigation required in the MOA with MHC and MHD is photographic documentation of the Building in accordance with MHC's recordation requirements; and

WHEREAS, all parties agree that the Building may be demolished; and

WHEREAS, the SHPC wishes to impose additional measures to mitigate the adverse effect of the demolition:

NOW THEREFORE, the City of Somerville, SHPC and the Developer hereby agree that the Project shall be undertaken and implemented in accordance with the following stipulations in order to mitigate the effect of demolition on the Building:

1. Documentation

A revised Form B shall be submitted to the SHPC and to the MHC reflecting additional research findings on the property.

2. Photographic Recordation

Photographic documentation shall be conducted of existing conditions in the form of 4X6 archival quality photographs that meet the National Park Service Standards for archival printing as specified in their National Register Guidelines. The photographs shall be keyed by number to a floor plan sketch. The views shall include exterior elevations, interior spaces, and significant features (both typical and unique), including windows, entrances, moldings, etc. All photographs shall be accompanied by negatives and shall be archivally-processed and numbered or captioned on the back in pencil, but unmounted with no affixed labels. One (1) original archival set (with original negatives) of photographs shall be submitted in an archival envelope or box to MHC to be transferred to the Massachusetts Archives. A second set of photographs shall be submitted to the SHPC.

3. Interpretive Exhibit

An interpretive exhibit shall be displayed in a public location on the Project site in proximity to the proposed community path and shall be either: (1) a photo or photos of the building/site (current and/or historic) with identifying captions and a brief history of its use; or (2) a public art work reflecting the history of the site. Plans for the interpretive exhibit shall be submitted to the SHPC for review and comment prior to installation.

4. Oral History

An oral history will be compiled, the scope of which will be agreed upon between the developer and SHPC. The oral history will be submitted to the MHC and to the SHPC for retention at the Somerville Public Library. It shall be open and accessible to the public.

5. Design Review

The SHPC may provide comment to the Planning Board, the Design Committee or any other public hearing process with regard to Developer's conformance/nonconformance to the historic design guidelines noted in the Agreement. The Developer will provide a minimum of two weeks notice, where possible, to the SHPC of such public meetings concerning Project design of which the Developer is aware or in which the Developer

participating. To the extent that they can be implemented in a manner that is determined to be cost-effective, the Developer, the Developer shall make good faith efforts to incorporate historical references in the design of the Project that are consistent with the intent of the following historic design guidelines 1 through 5:

1. GLAZING: The Developer shall investigate and make good faith efforts to explore and incorporate glazing assemblies or treatments that are more industrial looking and/or evoke or convey a sense of the industrial history of the site.
2. METAL CLADDINGS: The Developer shall investigate and make good faith efforts to incorporate metal panel and/or corrugated metal materials in the Project to evoke the metal sheds and water tanks that currently exist at the Project site.
3. ROOF LINES: The Developer shall investigate and make good faith efforts to incorporate roof slope roof pitches more closely resembling the Building.
4. ENTRY CANOPIES: The developer shall investigate and make good faith efforts to include metal-framed entry canopies for the building(s) or at some location on the site, which substantially reflect conditions currently existing at the site.
5. SITE DEVELOPMENT, BUILDING LAYOUT & MASSING: The SHPC concurs with the building design guidelines set forth on pages 15 - 16 of the Maxpak Community Planning Process Report, dated June 27, 2005, in the section of the Report titled "Building Design". These guidelines only reflect community concerns regarding site development and massing, but those of the SHPC as well. The Developer should make good faith efforts to substantially conform to these guidelines and make good faith efforts to substantially reflect the historic street grid in the site design.

6. *Successors and Assigns*

This MOA shall be recorded at the Middlesex South District Registry of Deeds and shall be binding on the Developer's successors and assigns.

7. *Condition*

This MOA shall become null and void if and when (i) the Somerville Board of Aldermen does not adopt zoning allowing the Project to be permitted as a PUD-B1; or (ii) the Planning Board does not give Preliminary Map Plan Approval for the Project; or (iii) the Planning Board does not approve a Special Permit with Site Plan Review for Phase 1 of the Project, consisting of the construction of 65 units (with no more than 110 bedrooms) at Warwick and Clyde Streets.

SIGNATURES FOLLOW

EXECUTED UNDER SEAL on the day and year first written above

DEVELOPER:

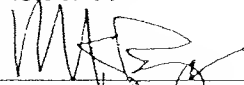
61 Clyde Street Acquisition, LLC

By:

Master Clyde Street Acquisition, LLC,
Manager of 61 Clyde Street Acquisition, LLC

**SOMERVILLE HISTORIC
PRESERVATION
COMMISSION:**

By:


Michael Payne

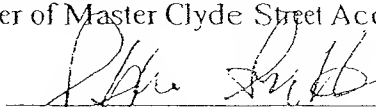
Its:

Chairman

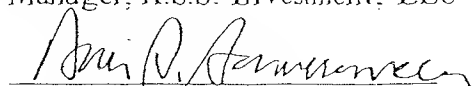
By:

K.S.S. Investment, LLC,
Manager of Master Clyde Street Acquisition, LLC

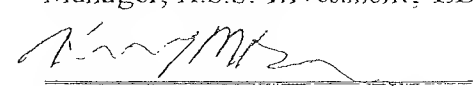
By:


Stephen Smith
Manager, K.S.S. Investment, LLC

and


Darin S. Samaraweera
Manager, K.S.S. Investment, LLC

and


Henry M. Rosen
Manager, K.S.S. Investment, LLC

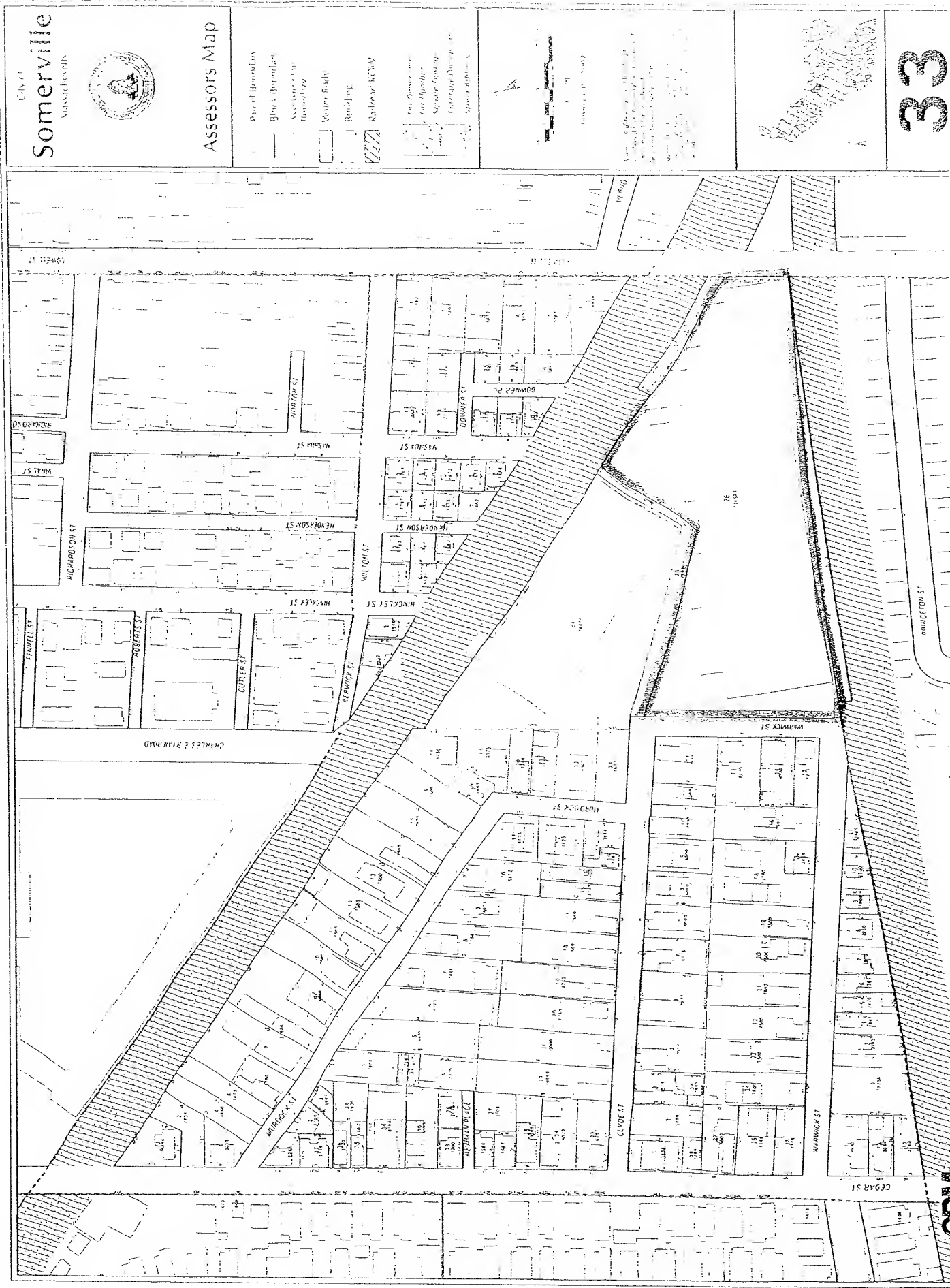


EXHIBIT C
Accoustical Consultant Proposal

April 27, 2007

Stephen Smith
KSS Realty Partners
20 Park Plaza
Boston, MA 02216

Subject: Proposal for Acoustical Consulting Services
61 & 56 Clyde St. (formerly known as MaxPac)
Somerville, MA
Acentech Proposal No. P07-407

Dear Stephen:

We appreciate the opportunity to provide this proposal to assist you with acoustical consulting services for the 61 & 56 Clyde St. residential development project. You have explained that there is concern in the neighborhood for the sound level impacts from the changes to this site. You have asked us to provide guidance on the issue of the railroad noise during the interaction with the neighbors. We can also be available to perform a computer analysis of the conditions. We propose the following services and fees for this project.

SCOPE OF SERVICES

Task 1 – Hourly Acoustical Consulting

We propose to initiate our services on an hourly basis to assist you as necessary with interaction with the community. This might include meeting with you and the neighbors to discuss the various plans for the site and discussing the potential acoustical results of those modifications. This guidance would be based on conceptual analyses and brief theoretical studies to start the dialogue with the interested parties.

Task 2 – Computer Sound Level Analysis

Following this initial involvement, we propose to perform a quantitative study of the potential changes in neighborhood sound levels that might result from the demolition of the existing warehouse buildings and the construction of the new residential buildings. This study would be performed using an acoustical software package that incorporates geometric information, such as the topography, buildings, and plans, with sound sources, such as the rail lines, to calculate the sound levels in the community. The results can be provided in color contours that highlight the estimated sound level differences in community from the changes on the site.

For this study, the primary focus would be the comparison of the current sound levels with levels expected once the new buildings in place. For this reason, we propose to concentrate on the modifications to the site, which are shown in existing aerial photos and architectural renderings, rather than performing an extensive sound level survey of the railroad impact on the neighborhood.

We will provide the results of our analysis in a letter report. We plan to meet with you twice after you have reviewed the report; once with you and your design team, and a second time with you and the neighbors, if necessary.

FEES, TERMS AND CONDITIONS

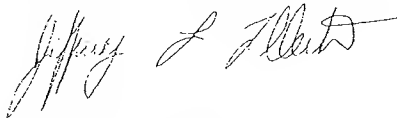
We propose to perform our services on a time and materials basis in accordance with the attached Terms and Conditions. For the services described above, Task 1 will be performed at our standard hourly rates, which are included (my rate is Supervisory Consultant Level I), as you request our services. For Task 2, we estimate that the cost will be between \$3,500 and \$4,000, which includes the analysis, letter report and two follow-up meetings. Reimbursable expenses related to travel for the site visit and meetings are estimated to be minimal, but are included in this fee estimate above and are charged in addition to our consulting time.

* * * * *

I trust this letter outlines the services you need in connection with this project. If this proposal is acceptable as written, please provide authorization to proceed by signing in the space below and returning a copy by fax. Please call me at 617-499-8058 if you have questions or would like us to alter the proposal to suit your needs better.

Sincerely yours,

ACENTECH INCORPORATED



Jeffrey L. Fullerton
Director, Architectural Acoustics Group

Encl.: Terms and Conditions
Standard Commercial Rates

ACCEPTED FOR KSS REALTY PARTNERS:

By: _____

Title: _____

Date: _____

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EXHIBIT D
Traffic Mitigation Plan

Table 1
Mitigation Program - Proposed MaxPak Site Redevelopment

Location	Potential Improvements	Approximate Equipment/ Construction Cost	Approximate Design Cost	Responsible Party
Cedar Street / Highland St	• New Traffic Controller			
	• Vehicle Detection Loop Detectors	\$50,000	\$20,000	Funding - KSS
	• Semi Actuated Traffic Signal Control Phasing/Programming			Construction - City
	• OPTICOM Equipment (Emergency Vehicle Pre-emption) & Emitters			
Cedar Street Path Crossing	• Raised pedestrian crossing	\$30,000	\$20,000	Funding - KSS
	• Warning Beacons/Signs			Construction - City
Cedar Street/Clyde Street	• Curb "Bumpout", Striping & Signs	\$10,000	City/In-house	Funding - KSS
				Construction - City
Lowell Street	• Raised Traffic Table - Alpine Street area	\$20,000	\$10,000	Funding - KSS
				Construction - City
Lowell Street / Medford Street	• Contribution Toward Future Signalization	..	\$30,000	Funding - KSS
				Study/Implementation - City
Lowell Street - Richardson Street Area	• Raised Traffic Table - Richardson Street area	\$20,000	\$10,000	Funding - KSS
				Construction - City
	TOTAL	\$130,000	\$90,000	\$220,000 Funding - KSS

EXHIBIT E
Acceptable Charitable Purposes

The prevention or relief of poverty.
The advancement of education.
The advancement of religion.
The advancement of health or the saving of lives.
The advancement of citizenship or community development.
The advancement of the arts, culture, heritage, or science.
The advancement of amateur sport.
The advancement of human rights, conflict resolution, or reconciliation or the promotion of religious or racial harmony or equality and diversity.
The advancement of environmental protection or improvement.
The relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage.
The advancement of animal welfare.
The promotion of the efficiency of the armed forces or of the police, fire and rescue services or ambulance services.
Other purposes currently recognized as charitable and any new charitable purposes which are similar to another charitable purpose.